



04-17-02

DACT
#19

EXPRESS MAIL NO.: EL 477 035 792 US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Tucker et al.

Application No.: 09/164,714

Group Art Unit: 1633

Filed: October 1, 1998

Examiner: M. Wilson

For: MORAXELLA CATARRHALIS
PROTEIN, GENE SEQUENCE AND
USES THEREOF

Attorney Docket No.: 7969-074-999

**PETITION UNDER 37 C.F.R. § 1.10(c) TO CORRECT FILING DATE
TO ACCORD WITH U.S.P.S. DEPOSIT DATE AND DELETE
NEW SERIAL NUMBER WRONGLY ASSIGNED TO RCE**

Assistant Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231

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Sir:

On March 13, 2002, in accordance with the Rules of Practice for filing correspondence by "Express Mail" (37 C.F.R. § 1.10(a)), Applicants deposited a Request for Continued Examination ("RCE") and related documents (hereinafter, "the deposited correspondence") with the United States Postal Service (U.S.P.S.). Applicants used the U.S.P.S. "Express Mail Post Office to Addressee" service and paid sufficient postage therefor. The Express Mail Label No. was EL 477 035 130 US.

The deposited correspondence, a true copy of which, except for a copy of References AQ-BH, is attached as Exhibit 1 hereto, consisted of the following:

- 1) a return postcard ("Post-Card Receipt"), which on one side had an itemized list of the papers mailed on March 13, 2002, and Express Mail Label No. EL 477 035 130 US;
- 2) a Request for Continued Examination (RCE) Transmittal, including authorization for payment of RCE filing fee, extension of time fee, and fee for Supplemental Information Disclosure Statement (1 page); and
- 3) a Petition for Extension of Time Under 37 C.F.R. §1.136(a) for 5 months together with authorization for the required fee;

- 4) a Submission Under 37 C.F.R. §1.114 with Amendments, Appendix A, a marked-up version of the specification, and Appendix B, a marked-up version of the claims;
- 5) a Statement Regarding Permanence and Availability of Deposited Microorganisms and Corroboration Regarding Described Microorganisms with Exhibit A, a copy of the Receipt In the Case of an Original Deposit;
- 6) a Supplemental Information Disclosure Statement Under 37 C.F.R. §1.56; and
- 7) a Supplemental PTO-1449 Form and copy of References AQ-BH¹.

It has recently come to the attention of Attorneys for Applicants that the United States Patent and Trademark Office ("USPTO") has returned the Post-Card Receipt of the deposited correspondence showing a stamped receipt date of March 14, 2002 instead of March 13, 2002, attached hereto as Exhibit 2.

As a result, Applicants hereby petition the Commissioner under 37 C.F.R. §1.10(c) to correct the filing date of the deposited correspondence and to accord the correct date of filing in the USPTO as the U.S.P.S. deposit date of March 13, 2002. The facts in support of this petition are provided below.

1. This petition is being filed promptly in accordance with 37 C.F.R. § 1.10(c)(1)

Attorneys for Applicants recently became aware that the USPTO had accorded in error a receipt date of March 14, 2002 of the deposited correspondence. The Express Mail package deposited by Attorneys for Applicants on March 13, 2002, using Express Mail Label No. EL 477 035 130 US, included several other sets of correspondence, some in connection with newly filed application and others relating to already pending applications. Upon this discovery, Attorneys for Applicants telephoned the USPTO to determine whether there was any record of the correspondence being delivered. The USPTO computer database shows that the deposited correspondence had been received on March 14, 2002.

This petition is therefore being filed promptly after Attorneys for Applicants became aware that the USPTO had erroneously accorded the filing date of March 14, 2002, instead of March 13, 2002, in accordance with 37 C.F.R. § 1.10(c)(1).

¹ In order to not over burden the record, a copy of References AQ-BH is not enclosed herewith.

2. The Express Mail Mailing Label No. EL 477 035 130 US was placed on the deposited correspondence in accordance with 37 C.F.R. § 1.10(c)(2)

As demonstrated by the true copy of the deposited correspondence attached as Exhibit 1, the Request for Continued Examination (RCE) Transmittal, the Petition for Extension of Time Under 37 C.F.R. §1.136(a), the first page of the Submission Under 37 C.F.R. §1.114 with Amendment, the first page of the Statement Regarding Permanence and Availability of Deposited Microorganisms and Corroboration Regarding Described Microorganisms, the first page of the Supplemental Information Disclosure Statement Under 37 C.F.R. §1.56, the Supplemental PTO-1449 Form, and the Post-Card Receipt itemizing the correspondence contents all included the Express Mail Label No. EL 477 035 130 US at the top right hand corners of those sheets. As a result, the Express Mail Label No. EL 477 035 130 US was placed on the deposited correspondence prior to it being deposited with the U.S.P.S. in accordance with 37 C.F.R. § 1.10(c)(2).

3. The necessary supporting documentation is attached to this petition in accordance with 37 C.F.R. § 1.10(c)(3)

As indicated above, a true copy of the deposited correspondence, except for a copy of References AQ-BH, is attached as Exhibit 1 hereto and demonstrates that the deposited correspondence showed the relevant Express Mail Label No. EL 477 035 130 US. In addition, in accordance with 37 C.F.R. § 1.10(c)(3), a true copy of the Post Office to Addressee Express Mail Mailing Label No. EL 477 035 130 US is attached hereto as Exhibit 3. In the Date In box, the Express Mail mailing label clearly shows the "date in" as being the requested filing date of March 13, 2002. The Express Mail mailing label also bears a U.S.P.S. stamp verifying March 13, 2002 as the date of deposit with the U.S.P.S.. The mailing label additionally indicates that the sender is Attorneys for Applicants, Pennie & Edmonds LLP, 1155 Avenue of the Americas, New York, NY 10036; that the recipient is the Assistant Commissioner for Patents, Washington DC, 20231; and that sufficient postage of \$35.70 was paid.

Furthermore, a true copy of the Express Mail Certification dated March 13, 2002 and signed by an employee of Attorney for Applicants, Anthony Ali, is attached hereto as Exhibit 4. The Express Mail Certification indicates that the deposited correspondence corresponding to the attorney name Baldwin and attorney docket no. 7969-074-999 in the 9th

table entry of that document, was inserted into the Express Mail package corresponding to the Express Mail Label No. EL 477 035 130 US, and that this package was deposited with the U.S.P.S. using "Express Mail Post Office to Addressee" service on March 13, 2002. Information regarding attorney name and attorney docket number for other correspondences not related to this application has been redacted to preserve the confidentiality of that information in the remaining table entries of the Express Mail Certification.

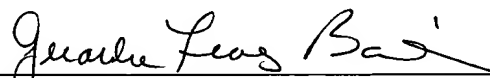
Finally, as already indicated, the copies of the deposited correspondence in Exhibit 1, the returned stamped Post-Card Receipt in Exhibit 2, the Post Office to Addressee Express Mail Mailing Label No. EL 477 035 130 US in Exhibit 3, and the Express Mail Certification in Exhibit 4 are all true copies of the respective original documents.

Accordingly, Applicants respectfully submit that all of the requirements of 37 C.F.R. §§ 1.10(a) and (c) have been fully met and complied with, and that therefore the deposited correspondence in Exhibit 1 – including the Request for Continued Examination contained therein – should be accorded a filing date of March 13, 2002, the date of deposit of that correspondence as Express Mail with the U.S.P.S.. It is believed that no fee is required in connection with this petition. However, should the Patent Office determine otherwise, please charge any necessary fee to Pennie & Edmonds LLP deposit account no. 16-1150.

Further, it is noted that the stamped Post-Card Receipt, Exhibit 2, indicates that a new serial number, *i.e.*, "10/088,159", has been assigned to this application. As the documents submitted constitute a Request for Continued Examination, it is submitted that this number is in error and request that it be deleted from the file of this application.

Respectfully submitted,

Date: April 16, 2002


Geraldine F. Baldwin 31,232
(Reg. No.)

PENNIE & EDMONDS LLP
1155 Avenue of the Americas
New York, New York 10036
(212) 790-9090

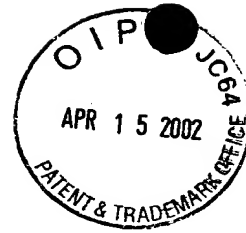
Enclosures

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EXHIBIT 1



Correspondence deposited (except for a copy of References AQ-BH) on March 13, 2002 with the U.S.P.S. "Express Mail Post Office to Addressee" service corresponding to Express Mail Label No. EL 477 035 130 US and including, except for a copy of References AQ-BH:

- 1) a return postcard ("Post-Card Receipt"), which on one side had an itemized list of the papers mailed on March 13, 2002, and Express Mail Label No. EL 477 035 130 US;
- 2) a Request for Continued Examination (RCE) Transmittal, including authorization for payment of RCE filing fee, extension of time fee, and fee for Supplemental Information Disclosure Statement (1 page); and
- 3) a Petition for Extension of Time Under 37 C.F.R. §1.136(a) for 5 months;
- 4) a Submission Under 37 C.F.R. §1.114 with Amendments with Appendix A, a marked-up version of the specification, and Appendix B, a marked-up version of the claims;
- 5) a Statement Regarding Permanence and Availability of Deposited Microorganisms and Corroboration Regarding Described Microorganisms with Exhibit A, a copy of the Receipt In the Case of an Original Deposit;
- 6) a Supplemental Information Disclosure Statement Under 37 C.F.R. §1.56; and
- 7) a Supplemental PTO-1449 Form and copy of References AQ-BH.

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EXHIBIT 2

Returned Stamped Post-Card Receipt.

Express Mail No.: **EL 477 035 130 US**

First Class Mail ()

Date Mailed: **March 13, 2002**

Serial No.: **09/164,714**

Filed: **October 1, 1998**

OK

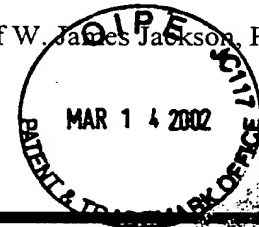
Inventor: **Tucker**

For: **MORAXELLA CATARRHALIS PROTEIN, GENE SEQUENCE AND USES THEREOF**

The stamp of the Patent Office hereon may be taken as an acknowledgment of the date stamped of the following:

10/088159

- (X) Request for Continued Examination (RCE) Transmittal;
 - (X) Petition for Extension of Time under 37 C.F.R. §1.136(a) for 5 months;
 - (X) Submission under 37 C.F.R. §1.114 with Amendments;
 - (X) Appendix A, marked-up version of the specification;
 - (X) Appendix B, marked-up version of the claims;
 - (X) Declaration Regarding Deposited Microorganisms of W. James Jackson, Ph.D with Exhibit A; **JC20 Rec'd PCT/PTO 14 MAR 2002**
 - (X) Supplemental Information Disclosure Statement;
 - (X) PTO-1449 Form and copy of References AQ-BH.
- File No. 7969-074-999** **Sender: GFB/rer**



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EXHIBIT 3

Express Mail Mailing Label No. EL 477 035 130 US.

POST OFFICE TO ADDRESSEE



EL477035130US

ORIGIN (POSTAL USE ONLY)	
PO ZIP Code 10017	Day of Delivery <input checked="" type="checkbox"/> Next <input type="checkbox"/> Second
Date In 3/30/02	Postage \$35.70
Time In 1:30 PM	Return Receipt Fee
Weight 13.7 lbs.	Int'l Alpha Country Code
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials W
Total Postage & Fees \$35.70	

CUSTOMER USE ONLY	
METHOD OF PAYMENT: Express Mail Corporate Acct. No.	
Federal Agency Acct. No. or Postal Service Acct. No.	<input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Only): Additional merchandise insurance is void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery. <input type="checkbox"/> NO DELIVERY <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday

FROM: (PLEASE PRINT) PHONE ()

PENNIE & EDMONDS LLP
1155 AVENUE OF THE AMERICAS
17TH FL
NEW YORK NY 10036-2711

TO: (PLEASE PRINT) PHONE ()

ASSISTANT COMMISSIONER
FOR PATENTS
WASHINGTON DC 20231-9999

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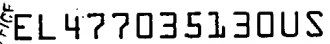
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Customer Copy

EXHIBIT 4

Express Mail Certification of Anthony Ali dated March 13, 2002.



THE EXPRESS MAIL NUMBER OF THE DAY IS: EL 477 035 130 US

THE PERSON TAKING EXPRESS MAIL
TO THE POST OFFICE IS: ANTHONY ALI

EXPRESS MAIL CERTIFICATION

"Express Mail" label No. EL 477 035 130 US Date of Deposit
3/13/02 I hereby certify that the below-listed papers or fees
were inserted into a package that was addressed to the
Assistant
Commissioner For Patents, Washington, D.C. 20231 and was
deposited by me with the United States Postal Service "Express
Mail Post Office Addressee" service under 37 C.F.R. 1.10 on
the date indicated above.

Anthony Ali

Date: 3-13-02

[illegible]

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